MOTION FILED
SEP 4 1980

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1980

No. 79-1056

NORTHWEST AIRLINES, INC.,
Petitioner,

v.

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO,
and
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

MOTION FOR LEAVE TO SUBMIT A BRIEF AS *AMICUS CURIAE*
and
BRIEF *AMICUS CURIAE* OF TRANS WORLD AIRLINES, INC.

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MOTION FOR LEAVE TO SUBMIT A BRIEF AS *Amicus Curiae*

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States

Pursuant to Rule 36 of this Court, Trans World Airlines, Inc. (TWA) respectfully moves this Court for leave to file the

accompanying brief as *amicus curiae* in support of the position of the petitioner, Northwest Airlines, Inc. (NWA) in this case. In support of its motion, TWA shows as follows:

1. This motion for leave to file is necessary under Rule 36(3) as counsel for respondent, Transport Workers Union of America, AFL-CIO, has advised that consent for the filing of this brief would not be granted. Because TWA has a direct stake in the outcome of the contribution issue, counsel for the petitioner has given his consent and will be filing a letter to that effect with the Clerk of the Court.

2. TWA is an international and domestic United States carrier by air subject to the provisions of the Railway Labor Act, 45 U.S.C. § 181 *et seq.* Among its approximately 32,300 employees are flight attendants who, from 1947 to date, have been represented for collective bargaining purposes by several labor organizations, including the Transport Workers Union of America (TWU), one of the respondents on this appeal. Like other international air carriers, TWA has long employed separate classes of flight attendants, *viz.* Pursers and Cabin Attendants, on its international flights; Pursers are not employed on TWA's domestic flights. Pursers have been paid at a higher rate than Cabin Attendants pursuant to union contracts, because, as asserted by TWA and the unions, they have additional duties and responsibilities. Between 1947 and 1967, the Purser category on TWA was all male and the Cabin Attendant category all female. In August 1967, the Purser position was opened to females; as of the present time, females fill approximately half of TWA's Purser positions, and TWA employs both male and female Cabin Attendants.

3. In 1970, a group of female TWA flight attendants commenced an action against TWA in the United States District Court for the Southern District of New York [*Maguire, et al.* v. *Trans World Airlines, Inc., et al.,* 70 Civ. 3947] alleging, among other things, that the salary differential between Pursers and Cabin Attendants violated both Title VII of the Civil Rights Act of 1964 (Title VII) and the Equal Pay Act

of 1963 because, they alleged, the jobs in fact involved equal work, skill, effort and responsibility and the salary differential between the two jobs was based upon sex. While Air Line Stewards and Stewardesses Association, Local 550, Transport Workers Union of America, AFL-CIO (TWU Local 550), then representing all TWA's flight attendants, was initially permitted to join the action as a plaintiff, TWA eventually forced its realignment as a defendant, and secured the joinder as defendants of its parent union, Transport Workers Union of America, AFL-CIO (TWU) and Local 550's successor, TWU Local 551. TWA and the defendant unions asserted that the salary differentials between the Pursers and Cabin Attendants are based upon differences in job duties and not sex. TWA further alleged that the pay differential between the Purser and Cabin Attendant jobs was insisted on by the defendant unions at the urging of TWA's largely female complement of Flight Attendants. The case was tried on the merits under the Equal Pay Act after interlocutory dismissal of the Title VII claims on jurisdictional grounds, and is awaiting decision. Should the merits be decided against TWA, the district court will be required to address TWA's claim against the flight attendant unions for contribution to TWA for a portion of any damages assessed against TWA attributable to those unions because of their actions in causing or attempting to cause TWA to maintain and increase the challenged wage differential in violation of Section 206(d)(2) of the Equal Pay Act.

4. The first two issues here presented (see Petition for Certiorari herein, p. 2) are identical to issues of contribution presented in *Maguire*. TWA is interested in a resolution of these issues favorable to the existence of a right to contribution.

5. Because the *Northwest* case comes before this Court as a result of motions to dismiss the complaint, the record is restricted to the pleadings and the decisions below. TWA is able to supply to this Court facts based on uncontradicted portions of the record evidence in *Maguire* which illuminate the practical equities favoring recognition of a legal principle of

contribution in cases of joint union-employer action violative of the Equal Pay Act and/or Title VII.

WHEREFORE, TWA respectfully requests that it be granted leave to submit the accompanying brief as *amicus curiae* in this case.

Dated: New York, New York
August 30, 1980

Respectfully submitted,

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BRIEF *AMICUS CURIAE* OF TRANS WORLD AIRLINES, INC.

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BRIEF OF TRANS WORLD AIRLINES, INC.,
Amicus Curiae

INTEREST OF THE *AMICUS CURIAE*

This brief is submitted pursuant to Rule 36(3) of this Court. Trans World Airlines, Inc. (TWA) has a substantial interest in the outcome of this case. TWA is a defendant in a

suit brought in 1970 under the Equal Pay Act of 1963 (Equal Pay Act) and Title VII of the Civil Rights Act of 1964 (Title VII) by a number of its female flight attendants who claimed that TWA violated those statutes by paying its then all-female Cabin Attendants, pursuant to provisions of collective bargaining agreements with the certified unions, a rate lower than that paid to its International Pursers, who at the time of the suit, were both male and female.[1] [*Maguire et al.* v. *Trans World Airlines, Inc., et al.*, 70 Civ. 3947 (S.D.N.Y.)]. By the time its action was tried, TWA had been employing male Cabin Attendants for a number of years, females already numbered some 40% of its Pursers, and the Purser pay differential required by TWA's successive agreements with the unions representing its flight attendants, had grown larger. During the trial, the District Court dismissed the Title VII claims on jurisdictional grounds (403 F. Supp. 734), completed the trial under the Equal Pay Act, and the cause is presently awaiting decision.

TWA had succeeded in joining the flight attendants' unions as co-defendants in the action prior to trial. Denying that the Purser pay differential was sex-based or unlawful, TWA also asserted cross-claims against those unions for damages, contribution, and indemnity in the event TWA was held liable in damages to the employees because of the pay differential which the unions had insisted on maintaining and increasing.

At trial, TWA, and the co-defendant unions, defended the action with evidence that the Purser and Cabin Attendant jobs did not require "equal skill, effort, and responsibility" within the meaning of the Equal Pay Act and that the salary differential they had contracted for was not in fact based on sex. TWA also introduced a considerable body of indisputable evidence—most of it documentary, stipulated to, or consisting of admissions by the plaintiffs and the defendant unions —demonstrating the responsibility of both the plaintiffs and the

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[1]Both TWA's Cabin Attendants and Pursers have, for years now, been male and female, the females now numbering approximately half of the Pursers; the pay differential continues in effect.

unions for the differential claimed by the plaintiffs to be unlawful.

TWA obviously has a substantial interest in the outcome of Northwest's case: the decision of this Court in Northwest's case may influence the disposition of TWA's claim for contribution in its still pending case if TWA's Purser pay differential established by its union agreements is adjudged to have violated the Equal Pay Act. Moreover, we believe that TWA can furnish assistance to this Court in its disposition of Northwest's case. That case comes before this Court on a pleading, without trial of the facts relevant to Northwest's claim for contribution. While this Court must now accept as true Northwest's allegations that the defendant unions bear responsibility for the Northwest pay differential[2], we submit that uncontradicted evidence from the TWA case, in which the issue of union responsibility for a pay differential has been thoroughly tried, will illuminate, clarify, and dramatize for the Court the range of actual situations in which the legal issue of contribution arises, and will assist the Court in adjudicating that issue.

We will not attempt to re-cover matters already ably covered by the Petitioner's brief, except that we do offer a modest addition with respect to the legal framework within which Congress enacted the Equal Pay Act and Title VII.

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[2]TWA understands that Northwest Airlines continues to contest the determination in *Laffey v. Northwest Airlines, Inc.*, 366 F. Supp. 763 (D.D.C. 1973) (findings of fact and conclusions of law), 374 F. Supp. 1382 (D.D.C. 1974) (order and supplemental memorandum), *aff'd in part, vacated in part, and remanded,* 567 F.2d 429 (D.C. Cir. 1976), *cert. denied,* 434 U.S. 1086 (1978), that Northwest's Purser differential constituted sex discrimination, and TWA believes that it has convincingly demonstrated in its own case, on a different record from Northwest's, that *its* Purser pay differential was not, in fact, based on sex and that it will not, accordingly, have to pursue its claim for contribution. That issue, of course, will be determined by the District Court.

SUMMARY OF ARGUMENT

I. TWA's documented experience illustrates the equity of and necessity for recognition of an employer right to contribution from a union party to a collective agreement where monetary liability is imposed on the employer under the Equal Pay Act or Title VII because of pay differentials required by the collective agreement.

II. In 1944, this Court, to avoid constitutional questions otherwise presented, held that Congress had impliedly created an employee right of action for damages for unfair representation under the Railway Labor Act against unions who negotiated contracts which unfairly discriminate against a class of employees they represent [(*Steele* v. *Louisville & Nashville Ry.*), 323 U.S. 192 (1944), discussed in M. SOVERN, LEGAL RESTRAINTS ON RACIAL DISCRIMINATION IN EMPLOYMENT 144-175 (Twentieth Century Fund, 1966)]. Before the Equal Pay Act or Title VII were enacted, damages were assessed against both employers and unions for discriminatory collective bargaining agreements violating the unions' duty of fair representation [*Central of Georgia Ry.* v. *Jones,* 229 F. 2d 648 (5th Cir. 1956)]. In *explicitly* prohibiting unions from entering into specified discriminatory collective bargaining agreements twenty years later in the Equal Pay Act and Title VII which provided new remedies against such conduct, Congress did not exempt those unions from damage liability to which they were already subject for just such discrimination or transfer the entire burden of the liability for such discrimination to the employers whom the unions had caused to discriminate.

ARGUMENT

I.

TWA'S DOCUMENTED EXPERIENCE ILLUSTRATES THE EQUITY OF AND THE NECESSITY FOR RECOGNIZING AN EMPLOYER RIGHT TO CONTRIBUTION FROM UNIONS WHERE MONETARY LIABILITY IS IMPOSED ON THE EMPLOYER UNDER THE EQUAL PAY ACT AND/OR TITLE VII.

Uncontroverted evidence adduced in the *Maguire* action illustrates the practical need to recognize a right to contribution under Title VII and the Equal Pay Act and the injustice of any contrary principle. Some of that evidence is related in a District Court opinion granting TWA's motion to dismiss the Title VII claims for lack of subject matter jurisdiction [*see Maguire* v. *Trans World Airlines, Inc.*, 403 F. Supp. 734 (S.D.N.Y. 1975)]. The rest of the story is found in other uncontradicted evidence in the trial record of that case.

In April 1968 Margaret Maguire, a female TWA cabin attendant, filed a Title VII charge with the EEOC against TWA, her employer, and her duly certified union, the Air Line Stewards and Stewardesses Association, Local 550, Transport Workers Union of America, AFL-CIO (TWU Local 550), (403 F. Supp. at 735-736)[3]. TWU Local 550 represented flight attendants on other airlines as well as TWA. Maguire's charge alleged, *inter alia,* that the higher-paid and largely male TWA Pursers did the same work as the lower-paid and then all female Cabin Attendants on TWA's international flights (*ibid.*). The separate Cabin Attendant and Purser pay rates were fixed by the collective agreement between TWA and TWU Local 550. In the same year she filed her charge, Maguire circulated a "Petition" addressed to TWU Local 550, ultimately signed by several hundred TWA female Cabin Attendants, entitled "Equal Pay for Equal Work," demanding that the union negotiate a pay differential for Pursers of $2.50

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[3]"TWU Local 550" is referred to as "ALSSA" by the District Court.

per flight credit hour, or slightly more than the differential payable under the union contract then in effect, on the stated ground that the Purser job carried with it extra responsibilities and duties which warranted the extra pay (*see* 403 F. Supp. 736).

The EEOC found "reasonable cause" to believe that both TWA and TWU Local 550 were "jointly and severally" discriminating against Maguire in violation of Title VII (*id.* at 736). TWA declined EEOC conciliation of Maguire's charge (403 F. Supp. at 738-739), but TWU Local 550, which was then negotiating a new flight attendant contract with TWA (403 F. Supp. at 736, 741-742), offered to "conciliate" through its attorney, Mr. Gilbert Feldman (403 F. Supp. at 740-741). Maguire having become Secretary of TWU Local 550 (403 F. Supp. at 740), retained Feldman to represent *her* in her EEOC matter. At that time, TWU Local 550 was demanding in contract negotiations a *widening* of the very Purser-Cabin Attendant wage differential which Maguire and TWU Local 550's attorney, Feldman, would soon claim as unlawful. Maguire and Feldman arranged with the EEOC for the latter to delay issuance to Maguire of an EEOC Notice of Right to Sue until Feldman requested it, a device which Maguire testified was designed to allow her to obtain maximum advantage in her forthcoming suit from the then pending contract negotiations between TWA and TWU Local 550 (403 F. Supp. at 740-742, 746).[4] In September 1970, Maguire, with Feldman as her attorney, filed a suit against TWA, but not against TWU Local 550. charging that the pay differential was unlawful under both the Equal Pay Act and Title VII.

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[4]Under the Equal Pay Act, the employee who, for unlawful reasons, is paid a rate lower than the higher rate paid to the favored class, is entitled to a judgment for the difference between the lower and higher rate. Accordingly, the higher Maguire's union negotiated the new Purser rate, the more valuable a judgment declaring that rate to be discriminatory would be to Maguire.

Soon after the suit was filed, TWA and TWU Local 550 agreed upon a new collective bargaining agreement which, in fact, somewhat widened the Purser pay differential attacked by the law suit. When TWA then moved to dismiss the action because the union had not been named as a party, TWU Local 550, with Feldman as its attorney, asked that it be permitted to intervene as a *plaintiff* attacking the wage differential it had just negotiated. The application was granted over TWA's objection. TWA thereupon counterclaimed against TWU Local 550 for contribution in the event TWA was held liable for damages. There matters stood until 1973.

By the next round of TWA-TWU contract negotiations (in 1972-1973), plaintiff Maguire had herself become a Purser and Chairman of TWU Local 550's Master Executive Council on TWA; in those negotiations, TWU Local 550 demanded, *at the bargaining table,* a further widening of the Purser-Cabin Attendant differential which, by this time, the union and its TWA Master Executive Council Chairman were both alleging, *in court,* to be unlawful. TWA, insisting that the differential was lawful, nevertheless resisted the union effort to widen it, initially taking the position that it should be reduced if the union was claiming that it was unlawful. TWU Local 550 persisted, however, in demanding an across the board percentage wage increase which would widen the dollar pay differential by the same percentage. TWA next took the position that it would agree only to increases of the same dollar amounts for Pursers and Cabin Attendants, in order not to increase the *dollar amount* of the pay differential and thus increase the rate of accrual of additional potential liability in the suit. There ensued a seven weeks' strike conducted by TWU Local 550 and its parent international, the Transport Workers Union of America, AFL-CIO (TWU) over that and other issues. It ended only when TWA yielded to TWU Local 550's and TWU's demands that the Purser salary differential be expanded by an across the

board percentage pay increase for all categories.[5] Plaintiff Maguire was one of the TWU Local 550 officials who signed the contract and who recommended its ratification by TWA's Cabin Attendants and Pursers.

In the wake of the TWA strike by TWU Local 550, which represented flight attendants on other airlines as well (*e.g.*, American and Eastern Airlines), TWU chartered a new TWU local, Local 551, to represent TWA employees only, with plaintiff Maguire as its Acting President. Based on the 1972-1973 negotiations, TWA moved in the law suit to have TWU Local 550, which was still named as a plaintiff, realigned as a party defendant, and to have TWU and its new Local 551 joined as parties defendant. That motion was now granted, and the District Court directed the individual plaintiffs to file a new complaint naming the unions as defendants, but not requiring them to allege claims against them; the District Court further ruled that Mr. Feldman could not represent both the individual plaintiffs and a defendant union in the lawsuit. The new complaint naming the unions as defendants, signed by Feldman, was then served, but no claims were asserted against the unions. TWA's answer to the new complaint denied that the Purser differential was discriminatory because of sex or unlawful, but also contained cross-claims against defendants TWU Locals 550 and 551 and against TWU itself for contribution, damages, and indemnification if any liability was found against TWA. All three unions, TWU Local 550, Local 551, and TWU, represented by new counsel, appeared and now asserted the legality of the Purser differential they had negotiated.

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[5]Plaintiff Maguire, Chairman of TWU Local 550's Master Executive Council and TWU Local 550 Treasurer during the strike, testified:

"Q So it is true that a condition to your ending the strike which began at 12:01 A.M. on November 5, 1973 was TWA's agreement to grant an across the board percentage increase to all categories of TWA flight attendants including pursers and domestic and international cabin attendants?

A Yes.

Q And the result of TWA's acquiescence in that demand was to expand the dollar differential between pursers on the one hand and the cabin attendants both domestic and international on the other?

A That was the end result."

During the trial, the District Court dismissed the Title VII claims on the ground that Maguire's Title VII action had not been timely commenced, because filed more than 30 days after receipt by Maguire of written notice of failure of conciliation (*Maguire* v. *TWA, supra,* 403 F. Supp. 734). In dismissing, the District Court particularly noted the "cynical" attempt by Maguire and her TWU Local 550 attorney to manipulate the time for filing suit in order to gain maximum benefit from the pending contract negotiations, in which they were attempting to increase the very differential they were about to charge was unlawful (403 F. Supp. at 746). After the trial started, and before the trial record closed, the unions demanded and obtained still another contract increasing the Purser pay differential.

If, despite the fact that TWA's Purser pay differential was maintained and increased at the insistence of the unions, twice to the point of strike during the pendency of the suit, it should ultimately be adjudged that the differential was in fact based on sex and unlawful and that TWA is liable in damages, it would, we submit, be unconscionable for TWA not to have a right of contribution against the unions. That result would obviously frustrate, not further, the statutory purpose, explicitly stated, to inhibit discriminatory collective bargaining agreements (29 U.S.C. §206(d)(1), (2); 42 U.S.C. §2000e-2(a),(c)). It would encourage unions to coerce employers, by strike, or by threat to strike, to enter into discriminatory contracts without practical concern that they were thereby subjecting themselves to actual liability. Plainly, the possibility that the employees, the Secretary of Labor, or the EEOC would sue the union for entering into a discriminatory contract, was not a sufficiently effective deterrent against TWU Local 550; in 1973, that union was itself formally a *plaintiff* suing to end the differential and to impose liability for it on TWA at the very time it was successfully striking, with its parent TWU, to obtain TWA's agreement to increase it.

Denial of an employer right to require contribution, we submit, would remove the most effective deterrent against

union violation of Section 206(d)(2) of the Equal Pay Act and of Section 2000e-2(c)(3) of Title VII in circumstances like TWA's.

II.

UNIONS WERE RESPONSIBLE IN DAMAGES TO EMPLOYEES FOR DISCRIMINATORY CONTRACTS UNDER THE FEDERAL LABOR STATUTES BEFORE THE EQUAL PAY AND CIVIL RIGHTS ACTS WERE PASSED; THOSE STATUTES DID NOT ELIMINATE THAT LIABILITY; NO INFERENCE CAN BE DRAWN OF A CONGRESSIONAL PURPOSE IN ENACTING THE LATER STATUTES TO INSULATE UNIONS FROM PRE-EXISTING LIABILITY FOR SUCH CONDUCT.

It seems to be generally argued that the employer's right of contribution against a union depends, at least in part, (1) upon the availability of a right in the employee (whether or not exercised) to recover from the union for the same injury for which the employer is liable, and (2) upon whether recognition of a right to contribution would frustrate the presumed purpose of Congress in enacting the statute which is the basis for the employer's liability.[6] In that context, it must be significant that before Congress passed the Equal Pay Act in 1963 and Title VII in 1964 it was widely understood that unions were already liable in damages to employees, by force of federal statute, for discriminatory collective agreements which were actionable breaches of the union's duty of fair representation, even without statutes explicitly prohibiting employers or unions from making or implementing such agreements.

This Court held in *Steele* v. *Louisville & Nashville Ry., supra,* in 1944, in order to avoid constitutional questions otherwise presented, that such agreements violated a statutory

---

[6]We note that there does not appear to be presented, in this case, the separate question of whether there exists a right of contribution under state law where the employer liability sought to be shared is created by federal law.

union duty of fair representation, implied by the Court from the statute making the union selected by the majority of the employees in a craft or class the exclusive representative of all members of that craft or class; the Court also held that the union was liable in damages to the employees for breach of that statutory duty; *see also International Brotherhood of Electrical Workers* v. *Foust,* 442 U.S. 42, 46 n. 8 (1979) (same obligation under National Labor Relations Act). By 1963, the basic principle had been reiterated by this Court in *Tunstall* v. *Brotherhood of Locomotive Firemen & Enginemen,* 323 U.S. 210 (1944); *Graham* v. *Brotherhood of Locomotive Firemen & Enginemen,* 338 U.S. 232 (1949); *Brotherhood of Railroad Trainmen* v. *Howard,* 343 U.S. 768 (1952); and *Conley* v. *Gibson,* 355 U.S. 41 (1957).

While those cases were cases of racial discrimination, it was understood that the same liability attached to any form of unfair discrimination:

> "The cases also make plain—and this of course is implicit in *Steele*—that discrimination not based on color may violate the union's duty even as discrimination along color lines does" [*see* Wellington, *Union Democracy and Fair Representation: Federal Responsibility in a Federal System,* 67 YALE L. J. 1327, 1335 (1958)].

See also Cox, *The Duty of Fair Representation,* 2 VILLANOVA L. Rev., 151, *passim* (1957). Moreover, by 1963, there was authority that an *employer* was derivatively liable, with the union, for damages caused to the employee by the union's breach of its federal duty of fair representation in the form of joint employer-union action [*Central of Georgia Ry.* v. *Jones,* 229 F.2d 648 (5th Cir. 1956); *Richardson* v. *Texas & N.O. R.R.,* 242 F.2d 230 (5th Cir. 1957), subsequently cited in *Vaca* v. *Sipes,* 386 U.S. 171 at 186 (1967), and in *Glover* v. *S.L.-S.F. Ry. Co.,* 393 U.S. 324, 331 (1969) (Harlan, J., concurring)].

A few years following the passage of the Equal Pay Act and Title VII, a distinguished commentator, Michael Sovern, in

his LEGAL RESTRAINTS ON RACIAL DISCRIMINATION IN EMPLOYMENT, *supra*, had occasion to observe:

> "As we shall see, the National Labor Relations Act and the Railway Labor Act have both been successfully invoked against some forms of union bigotry. Since Title VII says nothing about them, they presumably remain pertinent, even though, once again, dual regulation may result in some instances. This view is supported by a Justice Department memorandum presented to the Senate by Senator Joseph S. Clark during that body's discussion of Title VII. The memorandum said:
>
> > 'Nothing in title VII or anywhere else in this bill affects rights and obligations under the NLRA and the Railway Labor Act. The procedures set up in title VII are the exclusive means of relief against those practices of discrimination which are forbidden as unlawful employment practices by sections 704 and 705. Of course, title VII is not intended to and does not deny to any individual, rights and remedies which he may pursue under other Federal and State statutes. If a given action should violate both title VII and the National Labor Relations Act, the National Labor Relations Board would not be deprived of jurisdiction. . . . At any rate, title VII would have no effect on the duties of any employer or labor organization under the NLRA or under the Railway Labor Act, and these duties would continue to be enforced as they are now. . . .'
>
> Senator Clark added that Title VII 'would not affect the present operation of any part of the National Labor Relations Act or rights under existing labor laws'" (*id.* 98).
>
> * * *
>
> "The duty of fair representation was first articulated in the courts, and for most of the twenty-two years since the *Steele* case enforcement has rested mainly with them. State as well as federal courts have been held competent to

enforce the duty, and both have been free to award damages, injunctions, or both in appropriate cases" (*id.* 154).

* * *

"Perhaps Title VII of the Civil Rights Act of 1964 will succeed in eliminating the pockets of union discrimination that have so far resisted other remedies, but we have some reason to be pessimistic. Title VII needs complementing and Congress apparently recognized that need, for it made no effort to supplant any of the remedies antedating the 1964 legislation. Of particular interest here, Congress left fully available whatever help a wronged workman could obtain under the National Labor Relations and Railway Labor Acts" (*id.* 174).

The question of an employer's right to contribution from a union for liability imposed on the employer by the Equal Pay Act or Title VII resulting from unfair discriminatory collective bargaining agreements must thus begin with the proposition that the unions were already liable to the employees in damages under the federal labor laws for such agreements before the new statutes and remained so liable after the new statutes; the new statutes provided *new* remedies for that form of discrimination[7] and also served to define specific union activity which would unarguably constitute a breach of the union's pre-existing statutory duty of fair representation.

Typical of contribution cases, there appears to be no *direct* evidence as to any actual Congressional intention for or against an employer's federal right of *contribution* against guilty unions in connection with passage of the Equal Pay Act and Title VII. There is considerable evidence, discussed in Petitioner's brief, of an intention that unions were to have direct liability to employees under those statutes. In our view, however, the question of whether there is any impediment to contribution

[7]At the very least, §216(c) of the Equal Pay Act gave the Secretary of Labor the right to secure damages on the employee's behalf, and Title VII specifically authorized administrative investigation of a charge, conciliation, and an employee court suit for damages with provision for attorneys fees (42 U.S.C. §2000e-5).

from unions for employer liability under those statutes cannot be determined solely by examination of those statutes alone, considered in isolation. Each of those statutes is only part of a larger structure of law, and within that larger structure the unions were already liable, and have remained liable, in damages to the employees *under the earlier labor statutes* for joint employer-union unfair discrimination.

In that larger legal framework, we submit, there can be no policy or practical basis for inferring from the addition of certain new rights of action against employers and unions under the Equal Pay Act or Title VII a Congressional intention that *unions* were to be insulated from suits for unfair discrimination expressed in union-employer agreements or not subject to damages for contribution by employers sued under the new statutes for actions for which the unions were already liable and continued to remain liable.

CONCLUSION

The Court should recognize an employer's right to contribution from unions for liability imposed on the employer under the Equal Pay Act and Title VII where that liability arises out of collective bargaining agreements.

Dated: New York, New York
August 30, 1980

Respectfully submitted,

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